

Session Careening To a Close

According to the budget it established for itself, the Legislature is scheduled to adjourn on Wednesday, June 8. According to Maine statutes, the adjournment date is Wednesday, June 15. Dozens upon dozens of bills are in the queue, yet to be debated and voted on. The centerpiece policy issue of this session, the biennial state budget, has yet to be finalized by the Appropriations Committee and for much of this week the budget negotiations that go on behind the scenes appeared to be stuck. The bond bills have not had their public hearings as of yet, and discussions on the size of the bond package (if there will be a bond package at all) have not yet publicly begun.

Despite all of that, there is not a great deal to report about in the *Legislative Bulletin* except for cheap rumors and the boring stories lobbyists exchange while cooling their heels on the third floor of the State House. A very large percentage of the significant bills affecting municipal government were reported out of the respective legislative committees with strong “ought to pass” or “ought not to pass” reports, and there is little mystery about how they are going to end up at the conclusion of the legislative process. Beyond the two bills identified below, the major policy issues affecting town and city government that are still in play will be focused in the biennial state budget (LD 1043) and the decisions the Legislature will make about borrowing for capital investments. Hopefully, details on both those fronts will be available for recounting in next week’s edition of the *Bulletin*.

Until then, MMA’s advocacy staff will likely be communicating to membership more directly through action alerts. Along those lines, two bills that municipal officials may want to talk to their legislators

about within the next few days are:

LD 1256, *An Act Concerning Tort Claims and Governmental Entities*. To our knowledge, this bill has yet to be formally reported out of the Judiciary Committee, where it received an 8-5 “ought to pass” report. All three Senators on that Committee voted to support the bill, so the only real chance to influence the outcome of this bill likely resides with your State Representatives in the House.

LD 1256 *would* change the immunity standard under the Maine Tort Claims Act.

Under Maine’s Tort Claims Act, governmental entities such as municipalities are liable for their negligent acts or omissions in their ownership, maintenance or

use of vehicles, machinery or equipment. The term “vehicles” includes cars and trucks, tractors, graders, aircraft, watercraft, snowmobiles, etc.

- LD 1256 would expand the definition of “use” such that a governmental entity could be held liable for such use regardless of whether its employee is operating the vehicle, machinery or equipment at the time of the occurrence or the equipment or machinery is owned and being operated by an independent contractor or that contractor’s employees.

- LD 1256 further provides that a governmental entity may be jointly and severally liable with a nongovernmental

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The Revised “Fair Share” Bill

No Direct Focus on Labor Relations at the Local Level

A few short weeks ago, it looked as though the public sector “right to work” bill, LD 309, would not even get its public hearing this year. The bill was assigned to the Labor, Commerce, Research and Economic Development (LCRED) Committee back in February but conspicuously was never scheduled for a public hearing. Rumor had it that the bill was considered too divisive from a partisan perspective and would either be allowed to die on the vine this session or get carried over to the next legislative session. That didn’t happen; so much for State House rumors.

Last week, both houses of the Legislature voted almost exactly along party lines to revive LD 309 and send it back to the LCRED Committee for a public hearing. Yesterday, Committee members heard hours of testimony from proponents and opponents alike regarding an amended version of LD 309, which was introduced

by its sponsor Rep. Tom Winsor of Norway at the onset of the public hearing.

LD 309. As printed, LD 309, *An Act to Make Voluntary Membership in a Public Employee Labor Organization in the State*, amended the state’s labor laws to ensure that each public sector union—at the state, county or municipal level—represents only those public employees who wish to be a member of the union. At issue are the so-called “fair share” agreements that under current law can be established as a negotiated agreement between labor and management. If negotiated and implemented, “fair share” agreements apply to those employees within a bargaining unit who choose not to be a member of the labor union. Although not members of the labor union, a “fair share” agreement requires those employees to nonetheless contribute a certain fee to the union to

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person or entity if to some cognizable degree the negligent acts or omissions of the governmental entity were partially the cause of the injury or damage. "Joint and several liability" means municipalities could be held entirely financially liable for damage caused by its contractor.

• In summary, if enacted LD 1256 would:

- Increase the municipal exposure to liability for injuries or damages for which the municipality is not responsible.
- Increase the cost of property and casualty insurance paid for by the town and city property taxpayers.
- Increase the number of lawsuits being filed.
- Create more ambiguity under the MTCA.
- Increase the burden and complexity of contract administration with the thousands of private sector contractors and vendors with whom municipalities regularly contract.
- Act to restrict a municipal interest in contracting with private sector contractors.
- Hold municipalities jointly and severally liable with a non-governmental entity or person if the negligent act or omission of the municipality was a cause of the damage or injury, no matter how slight the municipal involvement.

Municipal officials concerned about the impacts of this legislation should contact their legislators as soon as practicable.

LD 1326, *An Act to Allow School*

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Editorial Staff: Greg Connors, Kate Dufour, Geoff Herman, and Laura Veilleux of the State & Federal Relations staff.

Administrative Units to Seek Less Expensive Health Insurance Alternatives.

As originally printed, LD 1326 requires health insurers to provide to a requesting school committee or to a municipality within the school system information about the experience and claims history of that school system as a member covered under a group policy. The bill also allows school systems to offer group self insurance health and dental programs and to enter into cooperative agreements with other school systems and municipalities to provide such programs.

LD 1326 is directed at the Maine Education Association Benefits Trust (MEABT) insurance program, which is operated by the school teachers' union and provides a health insurance system for the entire group of school teachers statewide. The MEABT does not provide experience and claims history with respect to individual school systems. This refusal frustrates the ability of other insurance companies to develop and offer competitive plans for those individual school districts.

LD 1376 was given a 7-6 "ought to pass" report by the Legislature's Insurance and Financial Services Committee to which the bill was referred. The majority of the Committee supports the bill in an amended form which improves the wording of the printed bill without changing its substance. The minority report supports an alternative version of the bill which is the functional equivalent of "ought not to pass".

MMA's Legislative Policy Committee (LPC) voted to support LD 1326. The selectmen, city councilors and municipal managers that make up the LPC are frustrated by the apparent inability to encourage open competition for health insurance coverage with respect to Maine's school teachers. A system entirely conducive to competition exists with respect to health insurance options provided to municipal employees through their employers, and the presence of that competitive environment is considered generally beneficial to both the employees and the taxpayers who pay the employers' share of the freight.

The concern expressed by the Maine Education Association if LD 1326 were to pass is that the whole-group approach ceases to be effective if those individual school systems within the insured uni-

verse that are most attractive to competing insurance companies are removed from the large group through competition. In that case, only the higher-risk elements of the insured population are left for the MEA program.

The public policy issue seems to boil down to the balance between the interests of the premium payers in having access to a competitive insurance marketplace and the interests of a private organization in protecting the design of a large group program.

Maine's municipal officials come down on the side of the taxpayers picking up the premium. All levels of government are facing financial constraints and are being challenged to figure out more cost effective ways of providing services. An openly competitive environment is not preventing health insurance from being successfully provided to municipal employees throughout the state in a cost effective way. Municipal officials believe that a more competitive environment would beneficially expand choices and help control costs on the school side of local government health insurance benefits.

"Fair Share" Bill (cont'd)

cover the benefits they receive which are attributable to the union's efforts, such as negotiated wages and benefits and grievance or discipline representation.

The printed version of LD 309, however, was worded in such a way to result in other consequences, perhaps unintended. For example, by repealing certain provisions of current law, the bill would allow multiple unions to represent sub-groups of employees within a single bargaining unit. Current law is clear that only one labor union can be ultimately certified to represent the employees within a single bargaining unit. The prospect of having to deal with two or possibly several unions representing subgroups of employees within a single bargaining unit drove MMA's Legislative Policy Committee to take a strong position in opposition to LD 309 as the bill was printed.

A very different version of LD 309 was presented yesterday to the LCRED Committee at the public hearing. First, except for one provision, the amended version of the "right to work" bill does not apply to labor unions representing county

“Fair Share” Bill (cont’d)

or municipal employees. The amended bill is almost exclusively focused on the fair-share system at the State government level. Second, there is nothing directly included in the amended version of the bill that would allow multiple unions representing different workers within a single bargaining unit. Instead, the amended version of LD 309 makes a non-union employee’s contribution to a “fair share” payment to the union entirely voluntary, and prohibits any requirement that those payments must be made as a condition of employment. The bill also allows an employer to deduct the “fair share” payment from an employee’s paycheck only if the employee has agreed in writing to that deduction. On the flip side, the amended bill provides that the state employee union would no longer be required to represent a non-union employee in a grievance or discipline-related dispute if the employee is not paying the service fee.

A third and somewhat separate element of the amended bill prohibits the State from collecting union dues during any period of time the union contract has expired.

The only element of LD 309 that would affect municipal government in any way is the single provision that would repeal the current authorization in law for all public employers, including municipalities, to deduct an employee’s “fair share” fees from wages on behalf of the local union.

Ultimately, because municipal labor management relations were almost entirely dropped from most of the amended bill’s language, MMA did not take a position on this legislation at the public hearing. Instead, the hearing was monitored and reported on because this proceeding could provide some insight as to the direction state labor law may be taking within the next few years.

Background. LD 309 was introduced in an attempt to address concerns expressed by some state employees. These particular state workers are not members of the union but are still required to pay a “fair share” service fee due to the argument that they still benefit from certain collection bargaining efforts made on behalf of all state employees covered

by the state contract. This service fee has been assessed on non-union members since 2003. At that time, it only applied to newly hired employees. In 2005, this fee was expanded to apply to current employees as well and if these non-union state workers did not pay their “fair share” then they could be fired. By 2007, firing an employee that did not pay the service fee was no longer permitted by law. Instead, legislation was enacted that allowed an employer to take these fees from employees’ paychecks without their consent. So here we are.

Proponents. As more and more public hearings on the “big bills” are being choreographed these days, the public hearing on this bill ran for a full three hours before the actual general public got a chance to testify. During the pre-public part of the public hearing, the sponsor and several other legislators (both for and against), the chief counsel for the Governor (in support) and a prominent labor lawyer (in opposition) were allowed to testify without time limitation. By the time the general public was allowed to speak, the time clock was brought out to enforce a three-minute limitation, which became a two-minute limitation as the night wore on.

The proponents arguments were:

- It is unfair for people who do not want to belong to a private organization to be required to financially support that organization as a condition of employment.

- The expansion of “fair share” from new employees only (circa 2003) to all existing non-union employees (circa 2005) was forced through the Legislature in the middle of the night and without proper legislative oversight.

- LD 309 protects the interests of approximately 25% of state employees who choose not to belong to a union, and the minority’s interests need to be protected in law.

- The bill doesn’t do away with the fair share system; it merely returns the system to its status prior to the various changes implemented during the Baldacci administration when the “fair share” payments began to be required as a condition of employment and, subsequently, garnished involuntarily from wages.

- Changing the system to require the labor union to obtain the fair-share fees

through a voluntary payment system will serve to make the unions both more accountable and stronger.

Opponents. The primary arguments from those opposing LD 309 are:

- There is an inherent fairness to “fair share;” that is, the employees who choose not belong to the labor union nonetheless receive valuable benefits because of the union, and therefore should be required to financially contribute. Analogies were made to a resident of the town refusing to pay the property taxes because of a disagreement with the decisions the town has made, all the while still enjoying the services the town provides.

- The “fair share” calculation expressly prohibits the union from charging the non-union member for anything other than direct benefits received by that employee.

- The intent of the bill is to weaken and kill labor unions, first at the State government level, with all other union sectors to follow.

- The intent of the bill is to immediately strengthen the hand of the Administration in its current negotiations with the unions representing State workers by unilaterally taking one management request off the bargaining table.

- The provision of LD 309 that prohibits the collection of union dues when a contract has expired significantly shifts the balance of power because the employer would be given incentive to have the contract expire and the union would be effectively compelled to avoid contract expiration.

- The revised version of LD 309 raises innumerable questions of interpretation that will lead to a mountain of litigation; no other state in the nation would have labor laws of this nature and there would be no precedents to follow.

- Significant questions still exist as to what recourse the non-union employee would have under LD 309 with respect to representation in grievance and disciplinary matter; if LD 309 allows the union to not represent that worker, does the worker have a right to represent him or herself and become, in effect, his or her own union?

The public hearing went deep into Thursday’s night. The work session on LD 309 is scheduled for the afternoon of Monday, June 6.